

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINARECEIVED  
USDC, CLERK, CHARLESTON, S

2009 MAY 13 P 3:43

Shaheen Cabbagestalk, #295567,

Plaintiff,

v.

Civil Action No. 3:08-2718-SB-JRM

S.C. Department of Corrections;  
Jon Ozmint; Chaplain Van Bebber,  
Lieber Head Chaplain; and  
Headquarters Chaplain in Columbia,

Defendants.

**ORDER**

This matter is before the Court upon the Plaintiff's *pro se* complaint, filed pursuant to 42 U.S.C. § 1983. By local rule, the matter was referred to a United States Magistrate Judge for preliminary determinations.

On January 20, 2009, the Defendants filed a motion for summary judgment. On January 21, 2009, the Magistrate Judge issued an order pursuant to Roseboro v. Garrison, 528 F.2d 309 (4th Cir. 1975), advising the Plaintiff of the summary judgment procedure and the possible consequences of failing to respond adequately to the Defendants' motion. Notwithstanding this order, the Plaintiff failed to respond to the Defendants' motion. Therefore, on February 27, 2009, the Magistrate Judge issued a second order granting the Plaintiff an additional fifteen (15) days to respond to the Defendants' motion. Because the Plaintiff again failed to respond, the Magistrate Judge issued a report and recommendation ("R&R") on March 27, 2009, analyzing the issues and recommending that the Court dismiss the Plaintiff's complaint with prejudice for failure to prosecute. See Davis v. Williams, 588 F.2d 69, 70 (4th Cir. 1978); Fed. R. Civ. P. 41(b).

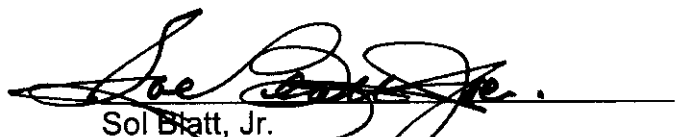
Attached to the R&R was a notice advising the Plaintiff of his right to file specific, written objections to the R&R within ten days of the date of service of the R&R. On April 10, 2009, the Plaintiff filed timely objections to the R&R. In his objections, the Plaintiff asserts that he did respond to the Defendants' motion for summary judgment but that it must have gotten lost in the mail. He further asserts that prison officials have intentionally interfered with his mail.

After review, and in the interest of fairness, the Court will grant the Plaintiff one more chance to comply with the Court's orders in this case. Therefore, the Court declines to adopt the R&R at this time. Instead, it is

**ORDERED** that the Clerk of Court send to the Plaintiff, along with a copy of this order, a copy of the Defendants' motion for summary judgment (Entry #31) and a copy of the Roseboro order (Entry #33) issued on January 21, 2009. The Plaintiff is instructed to file a response to the Defendants' motion within thirty (30) days of the date of this Order. If such a response is filed, then the Court will remand this matter to the Magistrate Judge for further findings. If no response is filed, then the Court will adopt the Magistrate Judge's R&R and dismiss this action with prejudice for failure to prosecute.

#2

**AND IT IS SO ORDERED.**

  
Sol Blatt, Jr.  
Senior United States District Judge

May 13, 2009  
Charleston, South Carolina